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HOUSE BILL 50

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Andy Nunez

AN ACT

**RELATING TO AGRICULTURE; AMENDING THE PESTICIDE CONTROL ACT TO
DEFINE "BUSINESS LICENSE" AND RAISE FEES.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 76-4-3 NMSA 1978 (being Laws 1973,
Chapter 366, Section 3, as amended) is amended to read:**

**"76-4-3. DEFINITIONS. --As used in the Pesticide Control
Act:**

**A. "equipment" means any type of ground, water or
aerial equipment, device or contrivance using motorized,
mechanical or pressurized power to apply any pesticide on land
and anything that may be growing, habitating or stored on or in
such land, but does not include any pressurized hand-sized
household device used by a homeowner to apply a pesticide or
any equipment, device or contrivance of which the person who is**

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1 applying the pesticide on his own land is the source of power
2 or energy in making the pesticide application;

3 B. "board" means the board of regents of New Mexico
4 state university;

5 C. "department" means the New Mexico department of
6 agriculture;

7 D. "device" means any instrument or contrivance
8 other than a firearm [~~which~~] that is intended for trapping,
9 destroying, repelling or mitigating any pest or any other form
10 of plant or animal life, other than man and other than
11 bacteria, viruses or other microorganisms on or in any living
12 thing other than plants, but does not include equipment used
13 for the application of pesticides when sold separately
14 therefrom, [~~or~~] traps used to control predators or rodents or
15 sterilization using dry heat or steam;

16 E. "distribute" means to offer for sale, hold for
17 sale, sell, barter or supply in this state;

18 F. "environment" includes water, air, land, all
19 [~~plant~~] plants and every living thing [~~therein or thereon~~] and
20 the existing interrelationships;

21 G. "insect" means any of the numerous small
22 invertebrate animals belonging principally to the class
23 insecta, including [~~but not limited to~~] beetles, bugs, bees and
24 flies, and to other allied classes of arthropods, including
25 [~~but not limited to~~] spiders, mites, ticks, millipedes,

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1 centipedes and sowbugs;

2 H. "ingredient statement" means a statement [~~which~~]
3 that contains the name and percentage of each ingredient of any
4 pesticide [~~which is~~] intended for one of the purposes under
5 Paragraphs (1) through (4) of Subsection N of this section, and
6 the total percentage of all ingredients in the pesticide not
7 for one of those purposes. If the pesticide contains arsenic
8 in any form, the ingredient statement shall contain a statement
9 of the percentages of total and water-soluble arsenic,
10 calculated as elemental arsenic;

11 I. "label" means the written, printed or graphic
12 matter on or attached to the pesticide or device or any of its
13 containers or wrappers;

14 J. "labeling" means all labels and all other
15 written, printed or graphic matter accompanying the pesticide
16 or device at any time; or to which reference is made on the
17 label or in literature accompanying the pesticide or device,
18 except to current official publications of the department, the
19 United States environmental protection agency, United States
20 departments of agriculture, [~~and~~] the interior [~~the department~~
21 ~~of health, education and welfare~~] and health and human
22 services, state agricultural universities and other similar
23 federal or state institutions or agencies authorized by law to
24 conduct research in the field of pesticides;

25 K. "land" means all land and water areas, including

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1 air space, and all living things, [~~all~~] structures, buildings,
2 contrivances and machinery appurtenant thereto or situated
3 thereon, fixed or mobile, including any used for
4 transportation;

5 L. "person" has the extended meaning ascribed to it
6 in Subsection E of Section [~~12-2-2~~] 12-2A-3 NMSA 1978;

7 M "pest" means any living organism injurious to
8 other living organisms, except man, viruses, bacteria or other
9 microorganisms in or on other living organisms other than
10 plants, [~~which~~] that the board by regulation declares to be a
11 pest;

12 N. "pesticide" means any substance or mixture of
13 substances intended for:

14 (1) preventing, destroying, repelling or
15 mitigating any pest;

16 (2) causing the leaves or foliage to drop from
17 a plant, with or without causing abscission;

18 (3) artificially accelerating the drying of
19 plant tissue; or

20 (4) accelerating or retarding the rate of
21 growth or rate of maturation, or for otherwise altering the
22 behavior of ornamental or crop plants or the produce thereof,
23 through physiological action, but does not [~~including~~] include
24 substances that are intended as plant nutrients, trace
25 elements, nutritional chemicals, plant inoculants or soil

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1 amendments;

2 0. "pesticide dealer" means any person who
3 distributes highly toxic pesticides, restricted use pesticides
4 or both, which pesticides are restricted by regulation to
5 distribution only by licensed pesticide dealers;

6 P. "pest management consultant" means any
7 individual who offers or supplies technical advice or makes
8 recommendations to the user of highly toxic pesticides,
9 restricted use pesticides or both, which pesticides are
10 restricted by regulation to distribution only by licensed
11 pesticide dealers;

12 Q. "registrant" means a person who has registered
13 any pesticide pursuant to the provisions of the Pesticide
14 Control Act;

15 R. "restricted use pesticide" means any pesticide
16 or device designated by the board as requiring specific
17 restrictions to prevent unreasonable adverse effects on the
18 environment, including man, beneficial insect predators and
19 parasites, pollinating insects, animals, crops, wildlife and
20 lands but excluding the pests the pesticide or device is
21 intended to prevent, destroy, control or mitigate;

22 S. "unreasonable adverse effects on the
23 environment" means an unreasonable risk to man or the
24 environment, taking into account the economic, social and
25 environmental costs and benefits of the use of any pesticide;

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1 T. "noncommercial applicator" means a person who
2 uses or demonstrates restricted use pesticides and does not
3 qualify as a private applicator and is not required to have a
4 commercial applicator's license;

5 U. "private applicator" means a certified
6 applicator who uses or supervises the use of any pesticide
7 [~~which~~] that is classified for restricted use for purposes of
8 producing any agricultural commodity on property owned or
9 rented by him or his employer or on the property of another
10 person if applied without compensation other than trading of
11 personal services between producers of agricultural
12 commodities;

13 V. "public applicator" means a certified applicator
14 who, as an employee of a federal, state, county, [~~city~~] or
15 municipal agency or municipal corporation uses or supervises
16 the use of any pesticide [~~which~~] that is classified for
17 restricted use only by certified applicators or persons under
18 their direct supervision; [~~and~~]

19 W. "commercial applicator" means a certified
20 applicator, whether or not he is a private applicator with
21 respect to some uses, who for compensation uses or supervises
22 the use of any pesticide for any purpose on any property other
23 than as provided by [~~Section~~] Sections 76-4-19 [~~NMSA 1978 and~~
24 ~~Section 8 of this act~~] and 76-4-20.1 NMSA 1978; and

25 X. "business license" means a license

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1 classification that is required for a business, corporation,
2 association or person that qualifies as or employs one or more
3 commercial applicators who use or supervise the use of
4 pesticides applied to the property of another for
5 compensation. "

6 Section 2. Section 76-4-22 NMSA 1978 (being Laws 1973,
7 Chapter 366, Section 22, as amended) is amended to read:

8 "76-4-22. FEES. --

9 A. Fees for the registration of pesticides and the
10 various licenses, inspection of apparatuses and examination of
11 applicants required by the Pesticide Control Act shall be set
12 by the board not to exceed the [~~amount~~] amounts authorized
13 below:

14 (1) annual registration fee for each pesticide
15 or device registered, not more than [~~\$35.00~~] \$150;

16 (2) annual pesticide dealer license for each
17 location or outlet within the state or, if there is no outlet
18 in the state, for the principal out-of-state location or
19 outlet, not more than [~~\$50.00~~] \$100;

20 (3) annual pest management consultant license,
21 not more than [~~\$50.00~~] \$100;

22 (4) annual commercial [~~pesticide~~] applicator
23 license, not more than [~~\$75.00~~] \$100;

24 (5) annual operator license, not more than
25 [~~\$50.00~~] \$75.00;

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1 (6) annual noncommercial applicator license,
2 not more than [~~\$50.00~~] \$100;

3 (7) private applicator certification or
4 renewal, not more than [~~\$5.00~~] \$25.00;

5 (8) additional inspection required to certify
6 each unit of aircraft, ground or manual equipment that fails to
7 pass inspection, not more than \$25.00; [~~and~~]

8 (9) examination fee for each examination
9 needed to qualify the applicant as a pest management
10 consultant, commercial [~~pesticide~~] applicator, noncommercial
11 applicator or operator or any combination thereof, not more
12 than [~~\$5.00~~] \$20.00; and

13 (10) annual business license \$100.00.

14 B. If the application for the renewal of a
15 pesticide registration or any annual license provided for in
16 the Pesticide Control Act is not filed prior to the expiration
17 date of the prior registration or license, the fee for [~~such~~]
18 renewal of registration or license shall be double the amount
19 specified in this section and shall be paid by the applicant
20 before the renewal registration or license [~~shall be~~] is
21 issued. Any person holding a current valid license may renew
22 his license for the next year without taking an examination
23 unless the department determines that additional knowledge
24 relating to the classification for which the applicant has
25 applied makes a new examination necessary. However, if the

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1 license is not renewed within thirty days after expiration, the
2 licensee shall be required to take new certification
3 examinations. "